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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

PLUMBERS AND STEAMFITTERS LOCAL 60 PENSION TRUST, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

META PLATFORMS, INC., MARK ZUCKERBERG, DAVID WEHNER, SHERYL SANDBERG, and SUSAN LI,

Defendants.

Case No. 4:22-cv-01470-YGR

DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS THE SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: April 16, 2024
Time: 2:00 p.m.
Court: Courtroom 1, 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

NOTICE OF MOTION AND MOTION TO DISMISS

TO PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 16, 2024 at 2:00 p.m. in Courtroom 1 of the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California, Defendants Meta Platforms, Inc. ("Meta"), Mark Zuckerberg, David Wehner, Sheryl Sandberg, and Susan Li ("Individual Defendants," collectively with Meta "Defendants") will and hereby do move for an order dismissing with prejudice Plaintiffs' Second Amended Complaint for Violations of the Federal Securities Laws ("SAC"), Dkt. 77.

This motion is made pursuant to Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6), on the grounds that each of the causes of action in the SAC fails to state a claim as a matter of law. The motion is based on this Notice of Motion and Motion to Dismiss, the Memorandum of Points and Authorities, Defendants' Second Request for Judicial Notice, and the accompanying declaration of Melanie M. Blunschi enclosed herewith, as well as the pleadings and papers on file in this action, the arguments of counsel, and any other matter that the Court may properly consider.

STATEMENT OF RELIEF SOUGHT

Meta seeks an order pursuant to Federal Rule of Civil Procedure 12(b)(6) dismissing this action with prejudice for failure to state a claim upon which relief can be granted.

DATED: November 14, 2023

LATHAM & WATKINS LLP

By: /s/ *Andrew B. Clubok*

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I. INTRODUCTION

Plaintiffs' First Amended Complaint ("FAC") contained four categories of alleged misstatements, expanding dramatically on the original complaint in search of a theory that could survive dismissal. It failed: This Court dismissed their kitchen-sink attempt to plead fraud by hindsight. Now, Plaintiffs' Second Amended Complaint ("SAC") abandons their primary set of allegations based on antitrust claims against Google and adds ten new, never-before-challenged statements to the remaining three sets, ensuring that the SAC still spans more than 300 paragraphs. As this Court observed, however, "just because a complaint is long doesn't mean that it's substantive." Hr'g Tr. 45:6-8 (Dkt. 76). That is as true now as it was then.

Plaintiffs' amended allegations about the impact of the iOS changes fail for the same reason as before: Meta warned investors about the major challenges ahead and kept them apprised of the rapidly evolving situation. Meta cautioned from the start that the iOS changes would be "very problematic," stated after Q2 that they were already proving "very challenging," and declared after Q3 that they had been "fundamentally profound." Nothing else Defendants said was remotely false or misleading. And the market responded exactly as one would expect: After *each* of the iOS challenged statements, in conjunction with allegedly "weak" earnings for Q2 and Q3, Meta's stock dropped. That is how securities markets are supposed to work, not an indication of fraud.

Plaintiffs' Reels allegations are similarly flawed. All along, Meta said its long-term strategy for Reels was to follow the same "playbook" it had used in prior product launches: Grow engagement first, and only later start to monetize. No reasonable investor could have understood Meta to be saying that Reels, despite being in the nascent stages of monetization on Instagram (and nowhere near even that point on Facebook), was already profitable. Meta explained that, while some initial signs were encouraging, Reels was still monetizing at lower rates than other products—and could cannibalize existing revenue streams. Here too, in the wake of the challenged statements, Meta's stock responded as one would expect: It dropped. Again, that is not fraud.

Plaintiffs' claims about Sheryl Sandberg fare even worse. Plaintiffs try to build out their

sparse allegations of misstated compensation figures primarily by pointing to acknowledgments in her book, Option B, in which Sandberg thanked several coworkers for being "generous with their time" and showing "compassion" during the writing process. But that expression of gratitude came in a book published *in April 2017*—long before even the earliest compensation period covered by the challenged proxy statements—and cannot seriously be countenanced as an admission that Meta employees were doing extracurricular projects for Sandberg while on the clock in later years. As for the rest of their allegations, Plaintiffs have done essentially nothing, apart from distorting a denial of wrongdoing from Sandberg's spokesperson.

In addition, Plaintiffs still lack any coherent scienter theory. It would make no sense for Meta to conceal known negative effects from the iOS changes or Reels, only to come clean shortly afterwards, while emphasizing risks and ongoing challenges in the interim. And the notion that Defendants consciously deceived investors because they did not factor unproven rumors about mainly pre-2018 conduct into 2018-2021 compensation disclosures makes even less sense. Across the board, the innocent account is more compelling than Plaintiffs' confounding story.

The Court should now dismiss this case with prejudice.

II. FACTUAL BACKGROUND

A. The iOS Privacy Changes

The SAC now leads with allegations about changes Apple made to privacy settings on iOS, the operating system that runs the iPhone. But before and after the iOS changes were "rolled out in late April 2021," SAC ¶ 62, Meta warned that they would be "very problematic," Ex. 5 at 15—and kept investors apprised of the rapidly evolving situation as it developed.[1]

Q4 2020. During its Q4 2020 earnings call on January 27, 2021, Meta warned that the iOS changes would cause "significant" business "headwinds in 2021," with an "increasing impact through the year." *Id.* at 9, 12. Specifically, Meta explained in its Form 10-K that Apple's changes "will reduce [our] ability to target and measure advertising, which we expect will in turn reduce the budgets marketers are willing to commit to us and other advertising platforms." Ex. 7 at 17.

[1] Unless otherwise noted, all exhibits are to the Blunschi declaration, filed herewith.

Wehner further cautioned that "some advertisers and businesses" will "decide that it's not cost-effective to advertise" on Meta's platforms and "drop out" altogether. Ex. 6 at 12. Given the "uncertain" future, Meta did not provide numerical revenue guidance for the future. Ex. 4 at 2.

Q1 2021. On March 2, 2021, at an investor conference, Wehner again warned that Meta "expect[ed]" the iOS changes to cause "an impact to [Meta's] business and to impact our growth rates." SAC ¶ 71. He also voiced uncertainty about the iOS changes' "relative effect" on various competitors "in the [mobile advertising] ecosystem," which was "not clear yet." *Id.* Then, within days of the iOS changes' April release, Meta released Q1 earnings data. Ex. 10 at 1-2. Meta's April 28, 2021, Form 10-Q again warned that the iOS changes "will limit our ability to target and measure ads effectively" and "impact monetization." Ex. 13 at 53.

On Meta's Q1 earnings call, Sandberg again emphasized the "challenges coming." Ex. 11 at 5. Wehner echoed that sentiment, saying that Meta "continue[d] to expect" that the iOS changes "will be a headwind for the remainder of the year." *Id.* at 11. While Meta hoped the impact would be "manageable," given "encouraging progress" on mitigation, the company "continue[d] to be concerned" about these "challenges." *Id.* To avoid setting off-the-mark market expectations, Meta again did not specify an expected range for future revenue following Q1. Ex. 10 at 2.

Q2 2021. On Meta's July 28, 2021 Q2 earnings call, Wehner warned that, while the iOS changes were "not fully rolled out," their "impact" was "in line with our expectations." Ex. 16 at 20 (**Statement 4a**).[2] That is, they were already "very challenging," *id.* at 14, and had caused "deceleration" of Meta's growth "rate[s]," Ex. 17 at 7. Li added that Meta's responsive steps had "mitigated some of the impact" but "obviously" were "not as performant as [the] real-time data." *Id.* at 8. When asked if they were "suggesting that [Meta was] not seeing any material impact," Wehner answered "No."—and Li reiterated, "No not at all." *Id.* at 6.

Meta stressed that the Q2 impact was just the start. Wehner "expect[ed]" the iOS changes to "have a more significant impact in [Q3]." Ex. 16 at 8. Meta's Q2 Form 10-Q reiterated that the iOS changes "have limited our ability to target and measure the effectiveness of ads on our

[2] Plaintiffs' statement chart identifies only categories of statements. *See* Dkt. 81-1. Defendants have filed an updated chart that uses letters to identify individual statements within each category.

platform and negatively impacted our advertising revenue." SAC ¶ 235. And it warned that, "if we are unable to mitigate these developments as they take further effect in the future, our targeting and measurement capabilities will be materially and adversely affected, which would in turn significantly impact our future advertising revenue growth." *Id.* (**Statement 1a**) (emphasis omitted). While Meta did not specify an expected range for future revenues, it "expect[ed] year-over-year total revenue growth rates to decelerate significantly," due largely to iOS "headwinds." Ex. 15 at 2. Given these and other developments, along with allegedly "weak financial results," Meta's stock price fell by 4.01% on July 29. SAC ¶¶ 263-64.

Q3 2021. As Meta had predicted, and as it confirmed at the end of Q3, the "worst of the iOS headwinds manifested in Q3." Ex. 22 at 8. Wehner called them "fundamentally profound." *Id.* at 7. Li noted that the Q3 impact was "really on the higher end of what we had expected." *Id.* at 2 (**Statement 4e**). Sandberg added that, "if it wasn't for [iOS], we would have seen positive quarter-over-quarter revenue growth." Ex. 21 at 5. And since adoption of the iOS changes "hit critical mass in Q3," "the accuracy of our ads targeting decreased," and "measuring [ad] outcomes became" even "more difficult." *Id.* "On measurement," Meta was "making good progress fixing" some problems—e.g., "underreporting iOS web conversions"—but Meta had to "continue to work on this into 2022." *Id.* "Targeting," Sandberg warned, was an even "longer-term challenge," since Meta had to "rebuild [its] targeting and optimization systems to work with less data." *Id.* at 10. In short, Wehner explained, Meta had "expected [the iOS changes] to be disruptive," and they "clearly ha[d] been." Ex. 22 at 2. Future "uncertainty" persisted, too, given how the iOS changes might "intersect" with the "holiday season," Ex. 21 at 14, how "advertisers would react," Ex. 22 at 2, and how well Meta could "improve" its mitigation efforts, *id.* at 6-7.

Consistent with these warnings, Meta's Q3 Form 10-Q reiterated its risk disclosure about the iOS changes' impact and potential for future harm. Ex. 23 at 56. And with the benefit of more information gained during Q3, Meta projected that Q4 revenues would be "$31.5 billion to $34 billion." Ex. 20 at 2. Afterwards, and amidst another round of allegedly "weak financial results" for Q3, Meta's stock fell by 3.92%. SAC ¶¶ 265-66.

Q4 2021. On February 2, 2022, Meta reported $33.67 billion in revenue for Q4, a figure

near the top of its projected range. Ex. 24 at 1. Even so, Li cautioned, "there [we]re still significant targeting and measurement headwinds" from the iOS changes. Ex. 26 at 4. Wehner added that "those headwinds will be particularly strong" in 2022. *Id.* at 10. And Sandberg said that "we expect the overall targeting and measurement headwinds to moderately increase" going forward. Ex. 25 at 5. Further, while Meta "did succeed in closing approximately half" of the "underreporting gap" it had previously identified, it turned out that those efforts affected only "a very small slice" of "the overall revenue landscape" during Q4. Ex. 26 at 4. All told, Wehner forecasted that "the impact of iOS overall as a headwind" for "2022" would be "$10 billion." Ex. 25 at 10. But there was even more significant news: Meta also reported that—for the first time in nearly two decades—its number of daily active users had declined from a prior quarter. Ex. 27 at 13. The next day, Meta's stock price fell by 26.39%. SAC ¶ 222.

B. The Reels Introduction

The SAC also renews allegations based on Reels, the short-form video product that Meta initially launched on Instagram (but not Facebook) on August 5, 2020—without any ads. SAC ¶¶ 190-91. According to Plaintiffs, Reels was Meta's answer to the "rise of TikTok," *id.* ¶ 189, a rival app, *id.* ¶ 186. Meta introduced Reels "to compete effectively" with "TikTok's highly engaging format." *Id.* ¶ 189. Here too, Meta warned about the risks associated with Reels and kept investors apprised of the progress of the nascent product launch.

Q4 2020. On Meta's January 27, 2021 Q4 earnings call, Sandberg outlined Meta's long-term strategy for Reels. Ex. 5 at 18-19. Meta, she explained, has a playbook: "[W]e're going to follow the same pattern we followed on other things like Stories." *Id.* "We launch a consumer product." *Id.* "We make sure there's product market fit, and people are using it." *Id.* "Then we launch an ad product." *Id.* And even afterwards, she continued, "we work very diligently" on "improv[ing]" and "scal[ing]" the ads strategy over time. *Id.*

As Meta's Form 10-K cautioned, however, this familiar approach means that Meta often "make[s] product and investment decisions that may not prioritize short-term financial results." Ex. 7 at 18. For example, Meta "may introduce new features or other changes to existing products" that "attract users away from" older products with "more proven means of monetization." *Id.* And

"from time to time, these efforts have reduced, and may in the future reduce, engagement with one or more products and services in favor of other products or services that we monetize less successfully or that are not growing as quickly," which in turn "may adversely affect our business and results of operations and may not produce the long-term benefits that we expect." *Id.*

Q1 2021. On March 2, 2021, Sandberg reiterated that Meta was taking its widely known, long-term approach to Reels. Ex. 8 at 9. This oft-tread "path to monetize" a new product, she warned, is "always hard work," never immediate or certain. *Id.* Then, after Q1 but before Reels ads launched on Instagram, Wehner detailed monetization challenges with Reels. Ex. 11 at 10-11. Yes, Reels was popular: It was "seeing really strong engagement" on Instagram. *Id.* But "video" products have "relatively fewer impressions on a time spent basis"—i.e., there are less frequent opportunities to show users ads. *Id.* Meta hoped to rely on its past "experience" in "trying to work to close th[is] gap" in impression rates. Ex. 12 at 14. For now, though, Wehner warned that ads-free Reels was competing not only with "others['] products," like TikTok, but also Meta's "own products," like News Feed. *Id.* That dynamic mirrored what Meta's Q1 Form 10-Q reiterated often happened with new products more generally. Ex. 13 at 54.

Q2 2021. "On June 16, 2021," after nearly a year of gaining traction on Instagram, "Meta launched ads on Reels on Instagram." SAC ¶ 191. Six weeks later, on Meta's Q2 earnings call, Zuckerberg emphasized the importance of taking the long view with Reels. He explained that, like it or not, video "is becoming the primary way that people use our products and express themselves." Ex. 16 at 1. Reels was "already the largest contributor to engagement growth on Instagram." *Id.* And since Meta had just "begun to make ads available," Wehner characterized Reels as an investment, saying, "I think Reels is a really significant future opportunity." *Id.* at 13.

That said, Sandberg warned that full Reels monetization would not be immediate, given what "[o]ur process has been" with prior product launches. *Id.* at 18. Sandberg added that "we're seeing very strong growth in video monetization" video products like Reels, and that "we think we're continually getting better at monetizing [them]." *Id.* at 23. But Reels was "still monetizing at lower rates." *Id.* Simply put, as Wehner explained, "It's still very early on the advertising front, but we think this should be a good ad format." Ex. 17 at 2 (**Statement 6b**). Meta's Q2 Form 10-Q

reiterated the risk disclosure about product launches generally. Ex. 18 at 55.

Q3 2021. At the tail end of Q3, on September 29, 2021, Meta launched an ads-free version of Reels on Facebook. SAC ¶ 48. A few weeks later, on Meta's Q3 earnings call, Zuckerberg reiterated that "Reels is already the primary driver of engagement growth on Instagram." Ex. 21 at 3. Given those early indications, he said, "I think that there's a huge amount of potential ahead," which made him "optimistic" about Reels' future. *Id.* Still, he cautioned that "we're still closer to the beginning of that journey than we are to [Reels'] maturity" as a fully monetized product. *Id.* at 13. Wehner agreed that Reels had "been a bright spot for Instagram," with "good growth" on engagement. *Id.* at 10. But he too warned that "we're just starting to roll out ads in Instagram" and "haven't gotten to a monetization point with Reels on Facebook." *Id.* Further, Wehner advised that, "[w]henever we launch new experiences," "you're always going to see some amount of shifting of people's time and attention to the new areas." *Id.* at 18. That said, "we do think" Reels is worth "investing" in because it can "drive incremental engagement." *Id.* Meta's Q3 Form 10-Q reiterated the risk disclosure about product launches generally. Ex. 23 at 57.

Q4 2021. On Meta's February 2, 2022 Q4 earnings call, Zuckerberg said that "we're in the middle of a transition" towards "short-form video like Reels," cautioning that, "as more activity shifts towards [Reels], we're replacing some time in News Feed and other higher monetizing surfaces." Ex. 25 at 2. But he was "confident that leaning harder into these trends is the right short-term tradeoff to make in order to get long-term gains." *Id.* Sandberg reiterated that "Reels monetizes at a lower rate than [News] Feed and Stories"—and agreed this was "a transition." *Id.* at 5. But she noted that Meta has "made successful transitions before," giving it "a playbook" when it comes to "monetizing" new products. *Id.* While also "confident in our ability to monetize over time," Wehner reminded investors that, "right now, there's relatively few ads" on Reels. *Id.* at 10. Looking ahead, Zuckerberg acknowledged that Reels is "going to monetize at a somewhat lower rate." *Id.* at 19. But he said, "I think this is clearly the right strategy," because Reels "is what people want." *Id.* So Meta's just had "to roll it out as quickly and as well as we can." *Id.*

C. Sandberg's Alleged Conduct

Plaintiffs' final set of allegations concerns alleged misstatements of Sandberg's annual

compensation. Plaintiffs say that proxy statements from April 9, 2021, and April 8, 2022, disclosing her non-salary compensation for the years 2018 through 2021 should have accounted for allegedly improper personal assistance. SAC ¶ 231 (**Statement 3a**); ¶ 247 (**Statement 3b**). Plaintiffs claim the assistance came to light in two news articles, both of which focused on allegations regarding pre-2018 conduct. *Id.* ¶¶ 273, 277.

The first article, from April 21, 2022, reported that Sandberg was "facing internal scrutiny over two occasions in which she [allegedly] pressed a U.K. tabloid to shelve" an unflattering (and later recanted) accusation against her ex-boyfriend, Bobby Kotick. Ex. 36 at 1. The article claimed that she "[w]ork[ed] with a team that included [Meta] employees as well as paid outside advisers" in 2016. *Id.* These "public-relations advisers" worried that the "story would reflect negatively on her reputation." *Id.* The article also reported that Sandberg herself had "contacted" the Daily Mail in 2019—and that Meta had "started a review of [her] actions" in fall 2021. *Id.* The story was sourced from unnamed "people with knowledge of the matter." *Id.* at 2. A month later, Sandberg "informed Meta of her decision to resign from her position as [COO]." SAC ¶ 275.

The second article, from June 10, 2022, reported that Meta was also reviewing alleged "work [Meta] employees did to support [Sandberg's] foundation" and "her second book," Option B, "which focused on her grieving process following the sudden death of her [first] husband" in 2015. Ex. 37 at 1. The article also relayed allegations about Sandberg's "coming wedding." *Id.* at 1-2. But it noted that her spokeswoman had denied them, stating: "Sheryl did not inappropriately use company resources in connection with the planning of her wedding." *Id.* at 2. The article confirmed that Meta's investigation "played no role in [Sandberg's] decision" to resign as COO (but stay on as a director). *Id.* It too relied on anonymous "people familiar with the matter." *Id.*

III. PROCEDURAL HISTORY

A. Plaintiffs' FAC

Plaintiffs' FAC was a scattershot salvo of four separate complaints in one. The FAC's primary set of allegations accused Meta of misleading investors about a purportedly anticompetitive contract. FAC ¶¶ 61-124 (Dkt. 55). The FAC also faulted Meta for supposedly:

(i) implying the iOS changes had not yet materially impacted Meta during Q2 and Q3; (ii) describing Reels' then-existing impact in a misleading way; and (iii) omitting personal assistance from Sandberg's compensation figures in two proxy statements. *Id.* ¶¶ 125-221. Plaintiffs dropped their claims against Li, and the remaining Defendants moved to dismiss. The bulk of the dispute boiled down to four statements repeated on a quarterly or annual basis:

- **Antitrust Allegations:** "We face significant competition in every aspect of our business," including, "for example, Google, Apple, [and others]." *E.g.*, FAC ¶ 223.
- **iOS Allegations:** Revenue was "negatively impacted" by "targeting and measurement challenges associated with iOS changes"—and, "[i]f we are unable to mitigate these developments as they take further effect in the future, our targeting and measurement capabilities will be materially and adversely affected, which would in turn significantly impact our future advertising revenue growth." *E.g.*, FAC ¶ 227.
- **Reels Allegations:** "We also may introduce new [products] that attract users away" from others with "more proven means of monetization"—and "from time to time these efforts have reduced, and may in the future reduce, engagement with" other products, which "may adversely affect our business and results of operations." *E.g.*, FAC ¶ 247.
- **Sandberg Allegations:** "All Other Compensation" given to Sandberg constituted "costs related to personal security" and "personal usage of private aircraft"—with no mention of allegedly improper personal assistance. *E.g.*, FAC ¶ 231.

On July 18, 2023, this Court held a hearing on Defendants' motion to dismiss the FAC.

B. The Court's Dismissal Of The FAC

After spending "an hour and 26 minutes going through all of the problems with [the FAC]," the Court ruled from the bench. The Court granted Defendants' motion to dismiss with leave to amend, as well as their unopposed request for judicial notice. Hr'g Tr. 37:19-38:2, 73:16-23.

On Plaintiffs' antitrust allegations, the Court held that "[t]he word 'significant' cannot be, in and of itself, sufficient for a securities violation," which foreclosed Plaintiffs' challenge to Meta's statement about facing "significant competition." *Id.* at 12:6-13:24. The Court concluded that Plaintiffs had not "allege[d] sufficient facts to plausibly state antitrust issues." *Id.* at 12:3-4.

On the iOS changes, Plaintiffs admitted that their "complaint" was that Meta "didn't use the term 'significant' or 'materially'" in the retrospective portion of its iOS risk disclosures. *Id.* at 36:6-12. And they conceded that they did not "take issue with the accuracy of [Meta's earnings] data." *Id.* at 39:9-11. As a result, this Court struggled to see "how [there could be] an actionable

misrepresentation just because [Meta didn't] use the word 'significant' or 'material.'" *Id.* at 39:12-15. The Court also faulted Plaintiffs for "not [having] described" their confidential witness "with sufficient detail," *id.* at 40:7-9, and for "suggest[ing]" that their purported corrective disclosure—Wehner's projection of a $10 billion headwind in 2022—was "backward-looking when it's not," *id.* at 46:22-47:3.

On Reels, the Court "concur[red]" that, through Q3 2021, "everybody in the world knew [Meta's] growth strategy [wa]s to drive folks to Reels," even though Meta had placed "no ads whatsoever on Reels on Facebook and only recently started ads on Instagram." *Id.* at 54:19-55:1. The Court also noted that "generic" risk disclosures about product launches did not "open[] the door" to a duty to give real-time reports on Reels' early effects on earnings. *Id.* at 58:10-20.

Finally, the Court found that Plaintiffs gave "[n]o details" about the improper assistance Sandberg allegedly received. *Id.* at 71:21-24. Their news articles also cited "confidential witnesses" who were not inherently "acceptable." *Id.* at 70:16-20. And regardless, the articles were "talking about *an investigation*" into Sandberg's conduct. *Id.* at 69:21-25 (emphasis added). Plaintiffs' Section 14(a) claims also fail because there was no "essential link" between the proxies and Plaintiffs' losses—both because the proxies "concerned Sandberg's election as a director, not [COO]," and because the vote on compensation was "nonbinding." *Id.* at 62:2-14, 63:14-17.

Three days later, the Court incorporated and "reiterated" in a written dismissal order the "reasons stated on the record at" the hearing. *See* Dkt. 74 ("FAC Order") at 1.

C. Plaintiffs' SAC

The SAC drops Plaintiffs' antitrust allegations but still challenges statements related to iOS, Reels, and Sandberg's compensation—including some statements about iOS and Reels that Plaintiffs never challenged before. It spans 343 paragraphs, complete with a 10-page report by an anonymous "certified public accountant." SAC ¶ 112; *see* SAC Ex. B.[3] And it brings claims

[3] This "expert report[]" offering a convoluted opinion on a series of self-serving assumptions was "generated for purposes of prosecuting this litigation" and should therefore be struck. *In re Herbalife, Ltd. Sec. Litig.*, 2015 WL 12734014, at *1 (C.D. Cal. July 28, 2015). Plaintiffs' counsel know better, having been reprimanded for filing a similarly "procedurally improper" report in the past. *See Yuan v. Facebook, Inc.*, 2021 WL 4503105, at *2 (N.D. Cal. Sept. 30, 2021).

against Li once again, despite Plaintiffs' previous decision to voluntarily dismiss her from this lawsuit. SAC ¶ 28.

Besides challenging the iOS risk disclosures, *id.* ¶¶ 235, 243 (**Statements 1a & 1b**), Plaintiffs attack statements that the Q2 impact had "been in line with our expectations," *id.* ¶ 227 (**Statements 4a & 4b**); *see id.* ¶ 231 (**Statements 4c & 4d**). They similarly target Li's October 25, 2021, statement that the Q3 impact was "really on the higher end of what we had expected." *Id.* ¶ 241 (**Statement 4e**). Next, Plaintiffs challenge three statements about mitigation efforts: (1) Li's Q2 description of "primary buckets of mitigations," *id.* ¶ 231 (**Statement 5a**); (2) Sandberg's Q3 remark that "measuring" and "targeting" were the "two big [iOS] challenges," and that, "[o]n measurement, we think we can address more than half of that underreporting by the end of the year," *id.* ¶ 239 (**Statement 5c**); and (3) Li's Q3 statement that, "I think the underreporting of web conversions has really been a bigger issue than we expected." *Id.* ¶ 241 (**Statement 5d**).[4]

As for Reels, Plaintiffs now attack more than just risk disclosures about product launches generally. *See id.* ¶ 237 (**Statement 2a**); *id.* ¶ 245 (**Statement 2b**). They challenge Sandberg's Q2 remark that "we're seeing very strong growth in video monetization" on "Reels," while noting that it was "still monetizing at lower rates." *Id.* ¶ 229 (**Statement 6a**). And they attack Wehner's Q2 statements that "Reels is going well" and that "we think this should be a good ad format," despite his warning that "[i]t's still very early on the advertising front." *Id.* ¶ 233 (**Statement 6b**).

Plaintiffs' claims regarding Sandberg's alleged conduct challenge the same two proxy statements as before. *Id.* ¶ 225 (**Statement 3a**); *id.* ¶ 247 (**Statement 3b**).

IV. LEGAL STANDARD

Plaintiffs must satisfy "demanding pleading requirements." *In re Rigel Pharms., Inc. Sec. Litig.*, 697 F.3d 869, 876 (9th Cir. 2012). They must plead their claims with "particularity," Fed. R. Civ. P. 9(b), giving precise allegations about the "who, what, when, where, and how." *Weston Family P'ship LLLP v. Twitter, Inc.*, 29 F.4th 611, 619 (9th Cir. 2022). They must "specify each statement alleged to have been misleading" and the "reasons why." 15 U.S.C. § 78u-4(b)(1)(B).

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[4] **Statement 5b**, which is the same Q2 statement from Wehner as **Statement 4d**, seems to have been mistakenly copy-and-pasted into Category 5 on Plaintiffs' chart. *See* Dkt. 81-1 at 7.

And their allegations must "giv[e] rise to a strong inference" of scienter. *Id.* § 78u-4(b)(2)(A).

V. ARGUMENT

For all three remaining sets of allegations, Plaintiffs *still* have not adequately pled an actionable misstatement or loss causation—or both. And, as before, there is no strong inference of scienter. Each of these shortcomings independently justifies dismissal with prejudice.

A. The Allegations About The iOS Changes Must Be Dismissed Again

Plaintiffs' iOS allegations remain meritless. No challenged statement was demonstrably "false at the time" it was made, *Ronconi v. Larkin*, 253 F.3d 423, 431 (9th Cir. 2001), or otherwise "affirmatively create[d] an impression of a state of affairs that differ[ed] in a material way from the one that actually exist[ed]," *Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002). Nor have Plaintiffs shown that any challenged statement, "as opposed to some other fact, foreseeably caused [their] loss." *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1210 (9th Cir. 2016).

1. The New Challenged Statements Were Not False Or Misleading

Plaintiffs challenge two new groups of iOS-related statements. The first are remarks by various Defendants saying, in substance, that the impact from the iOS changes during Q2 and Q3 was "in line" with Meta's expectations. The second discussed Meta's ongoing efforts to mitigate the impact of the iOS changes to the extent possible. Neither is false or misleading.

"In Line" With Expectations (Statements 4a, 4b, 4c, 4d & 4e). Most of the new iOS challenged statements concern Wehner and Li's July 28, 2021, remarks that the Q2 "impact" from the iOS changes "ha[d] been in line with our expectations." *E.g.*, SAC ¶ 227 **(Statement 4b)**. "Nothing about [these statements] would give a reasonable investor the impression that [the iOS changes' impact] was different than it was in reality." *Police Ret. Sys. of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051, 1061 (9th Cir. 2014). Meta had prudently *declined* to provide numerical guidance for Q2, given the uncertain and challenging environment. Ex. 10 at 2. Meta expected that the iOS changes would be "very problematic," Ex. 5 at 15, and would cause "significant" business "headwinds in 2021," with an "increasing impact through the year," *id.* at 9, 12. After Q2, Defendants warned that the iOS changes had contributed to "deceleration" of Meta's growth "rate[s]" during Q2, Ex. 17 at 7, and were already "very challenging," Ex. 16 at 14.

Meta also accurately disclosed, in Plaintiffs' own telling, "weak financial results" for the quarter. SAC ¶ 263. The market reacted accordingly: Meta's stock price fell by 4.01% on July 29. *Id.* ¶ 264. "That is precisely how securities markets are supposed to work," not fraud. *Greenberg v. Sunrun Inc.*, 233 F. Supp. 3d 764, 772 (N.D. Cal. 2017) (observing that investors use "publicly available information to assess th[e] risk" of investments for themselves).

So too for Li's October 25, 2021, statement that the iOS changes' Q3 impact was "really on the higher end of what we had expected." SAC ¶ 241 **(Statement 4e)**. What Meta had expected for Q3—and disclosed to investors—was that the Q3 impact would be even "more significant" as "compared to [Q2]," Ex. 16 at 8, and that Meta's growth rates would "decelerate significantly," Ex. 15 at 2. After Q3, Meta candidly told investors that the impact had indeed been "fundamentally profound," Ex. 22 at 7, "clearly" disruptive, *id.* at 2, and even "more difficult" than in Q2, Ex. 21 at 5. Li's statement thus underscored for investors that the negative effects that Meta had previously warned about had materialized—and were on the more severe end of Meta's "range of expected impact[s]." SAC ¶ 241. Once again, Meta's stock dropped in response to this realization of previously disclosed expectations, along with purportedly "weak financial results" that Plaintiffs concede were accurately reported. *Id.* ¶¶ 265-66. That is not fraud.

Plaintiffs try to cobble together a falsity theory in two ways, but both fail. First, they harp on the allegation that Meta "had conducted internal studies calculating the impact" of the iOS changes—without any details of what those studies purportedly showed. *Id.* ¶ 121. But Meta had no duty to "reveal [any] internal projections" trying to quantify the iOS changes' Q2 and Q3 impact, *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 391 (9th Cir. 2010), much less the "projected impact" that FE3 alleges Meta calculated before the iOS changes were released, SAC ¶ 108. That is because the securities laws prohibit only statements that *themselves* "paint a misleading picture." *Twitter*, 29 F.4th at 615. Defendants' statements were not misleading: They had warned that the iOS changes would be bad, and then confirmed later that the iOS changes had, in fact, been bad.

Second, Plaintiffs seize on Wehner's Q1 statement that "we think" the impact "will be manageable." SAC ¶ 73. They claim this remark assured investors that the anticipated impact was "not material," *id.* ¶ 78, so the allegedly material impacts after Q2 and Q3 were "not 'in line'

with Wehner's expectation that the changes were 'manageable.'" *E.g.*, *id.* ¶¶ 228, 232. Wrong again. For starters, the word "manageable" is too "imprecise" to make subsequent statements actionable. *Twitter*, 29 F.4th at 621. And since Wehner had said "we think" the impact "will be manageable," SAC ¶ 73, any later endorsement of that "subjective and uncertain assessment[]" is *also* an inactionable opinion, *Omnicare, Inc. v. Laborers Dist. Council Constr. Ind. Pension Fund*, 575 U.S. 175, 186 (2015). Furthermore, standing by a belief that the impact would ultimately be "manageable" does *not* imply that it was "immaterial." Those words are not synonyms.

At their core, the in-line-with-expectations statements cannot be understood "to mean the [iOS changes' impact] was benign." *Thant v. Karyopharm Therapeutics Inc.*, 43 F.4th 214, 223 (1st Cir. 2022). In the very Q4 statement that Plaintiffs cite as a corrective disclosure, Wehner remarked once again that the impact to date "was in line with our expectations." Ex. 25 at 10. That was true, since Meta's expectations had been grim all along: Meta warned from the start that the iOS changes would be "very problematic," Ex. 5 at 15, stated after Q2 that they were already proving "very challenging," Ex. 16 at 14, and declared after Q3 that they had been "fundamentally profound," Ex. 22 at 7. Plaintiffs' claim that "Defendants had never previously characterized the iOS 14 headwinds as 'big'" until Q4, SAC ¶ 113, must be rejected, as it is "contradicted by [the very] documents referred to in the [SAC]." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1030-31 (9th Cir. 2008). And their allegations that confidential witnesses "confirmed that Apple's iOS privacy changes had materially impacted Meta's business and revenues by Q2" add nothing. *See* SAC ¶¶ 107-112. "No investor, in the face of [Meta's] substantive disclosures, could reasonably conclude" that Meta had "surmounted all obstacles" caused by the iOS changes. *In re Convergent Techs. Sec. Litig.*, 948 F.2d 507, 516 (9th Cir. 1991).

Mitigation Efforts (Statements 5a, 5c & 5d). Plaintiffs also challenge three statements related to Meta's attempts to mitigate the effects of the iOS changes. They first challenge Li's Q2 statement that, "I think in the landscape we're at now, effectively we're looking at the sort of primary buckets of mitigations." SAC ¶ 231 **(Statement 5a)**. Plaintiffs claim this assertion "failed to tell the whole truth" because the mitigations Li mentioned "were not preventing the iOS privacy changes from having a severely adverse impact." *Id.* ¶ 232. But Li's statement, prefaced with

"I think," was an inactionable opinion about what she saw as the two main mitigations that could help blunt some of the impact. *Omnicare*, 575 U.S. at 186. Worse, Plaintiffs' gripe that Li didn't "tell the 'whole truth'" misunderstands the law. SAC ¶ 232. Again, Section 10(b) forbids only misleading statements; it does not require "complete disclosure of all material information whenever a company speaks on a particular topic." *Twitter*, 29 F.4th at 615. Li's remark could not have misled anyone: She explicitly cautioned that mitigation measures were "obviously . . . not as performant as [the] real-time data" taken away by the iOS changes. Ex. 17 at 8.

Plaintiffs next challenge—and brazenly mischaracterize—statements that Sandberg and Li made during Meta's Q3 earnings calls. Li said, "I think the underreporting of web conversions has really been a bigger issue than we expected." SAC ¶ 241 (**Statement 5d**). Noting that this "underreporting" issue was one of the "measurement" challenges posed by iOS (as distinct from "targeting" problems), Sandberg said, "we think we can address more than half of that underreporting by the end of [2021]." *Id.* ¶ 239 (**Statement 5c**). Plaintiffs claim these statements "gave the misleading impression that the iOS impact largely concerned Meta's underreporting of web conversions" and that Meta "could [thus] effectively mitigate the impact of the iOS changes to make them immaterial." *Id.* ¶ 242; *see also id.* ¶ 240 (similar). But both remarks are inactionable opinions. And regardless, neither implied that fixing underreporting would be a cure-all. Li merely stated her view that underreporting was a "bigger" issue than originally thought; not that it was the biggest iOS-related problem. *Id.* ¶ 241. Sandberg warned that fixing underreporting would not solve "[t]argeting" problems, which required "a multiyear effort." Ex. 21 at 10. And even as to "measurement," she said only that underreporting was one problem that Meta was optimistic it could partially solve by year's end. *See id.* at 5, 10. On top of all that, Plaintiffs are impermissibly pleading "[f]raud by hindsight." *Ronconi*, 253 F.3d at 430 n.12. While it turned out that underreporting was "a very small slice" of "the overall [Q4] revenue landscape," Ex. 26 at 4, that does not show that either Q3 statement was false *when made*.

2. The Old Challenged Statement Was Not False Or Misleading Either

Plaintiffs also continue their "missing adverb" attack. Meta's Form 10-Qs for Q2 and Q3 warned that (i) the iOS changes "have limited our ability to target and measure the effectiveness

of ads on our platform and negatively impacted our advertising revenue," and (ii) "if we are unable to mitigate these developments as they take further effect in the future, our targeting and measurement capabilities will be materially and adversely affected, which would in turn significantly impact our future advertising revenue growth." SAC ¶¶ 235, 243 **(Statements 1a & 1b)**. Plaintiffs complain that the retrospective statement "didn't use the term significant[ly] or 'materially.'" Hr'g Tr. 36:6-12. They claim this "directly implied" (whatever that means) that existing effects were not significant or material, SAC ¶¶ 236, 244—never mind that Meta's February 2, 2022 Form 10-K used *identical* adverb-free phrasing, Ex. 28 at 17.

Plaintiffs' position is still meritless. Wehner and Li removed all conceivable ambiguity by *expressly disclaiming* any "suggest[ion]" that Meta was "not seeing any material impact" from the iOS changes. Ex. 17 at 6. Further, the missing adverbs are too "vague" for their absence to be actionable. *Or. Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 606 (9th Cir. 2014). As this Court recognized, "[t]he word 'significant' cannot be, in and of itself, sufficient for a securities violation." Hr'g Tr. 12:6-8 (discussing since-abandoned antitrust allegations). That knocks out the revenue-facing portion of Plaintiffs' challenge, since "significantly" is the only modifier that Meta used to characterize potential future revenue effects. And as to targeting and measurement, the adverb "materially" is equally "incapable of objective verification." *Twitter*, 29 F.4th at 621. The word "material," this Court noted, is "meaningless" standing alone. Hr'g Tr. 40:23-41:2.

At any rate, assessing materiality "requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts." *Fecht v. Price Co.*, 70 F.3d 1078, 1080 (9th Cir. 1995). It was not fraud for Meta to refrain from trying to make such "delicate assessments" itself and, instead, to disclose accurate past financial data, while warning of potential future effects. *Id.* Using adverbs only in the forward-looking statement made perfect sense: As Plaintiffs admit, 17 C.F.R. § 229.105 required Meta to "provide under the caption 'Risk Factors' a discussion of the *material* factors that make [its securities] speculative or risky." SAC ¶ 251 (emphasis added). Characterizing future risks as "material" and "significant" was consistent with that command. Meta's retrospective statements, by contrast, came with hard data—making it unnecessary (and potentially unhelpful) to add vague color commentary.

Plaintiffs' own allegations prove the point. Even under their simplistic "rule of thumb" treating any 5% change as material, Plaintiffs cannot decide what qualifies. *Id.* ¶ 84. While they claim that the iOS changes "decreased Meta's advertising revenue" in Q3 by "greater than 5%," they now allege that the Q2 impact on revenues was only "4%." *Id.* ¶ 237. Seeing the obvious problem for their Q2 revenue challenge, Plaintiffs change their criterion, insisting that this alleged "4% decrease" was still "manifestly material" because it equated to a "6.7% decrease in net income," a *different* accounting metric. *Id.* ¶ 112. Yet just a few lines later, Plaintiffs contrast Q2 with Q3, asserting that only "the impact of the iOS changes in Q3[]" was "material." *Id.* ¶ 118.

These statistical shenanigans show the folly of trying to characterize past iOS effects as material or not. Instead, Meta issued accurate earnings data, detailed the ongoing challenges, and let investors make their own assessments. That is, again, "precisely how securities markets are supposed to work." *Greenberg*, 233 F. Supp. 3d at 772.

3. Plaintiffs Also Fail To Plead Loss Causation

Plaintiffs' iOS allegations fail for another reason: They have not pled a viable "corrective disclosure" that "revealed the [purported] truth" and "caused [Meta's] stock price to drop." *Lloyd*, 811 F.3d at 1209. They continue to assert that Wehner's projection of a "$10 billion" headwind for 2022 "revealed that Meta had misled investors about the preceding year." SAC ¶ 130. This Court rejected Plaintiffs' "extrapolation" of this "forward-looking" statement into a "backward-looking" one. Hr'g Tr. 47:24-48:1. Belaboring the point changes nothing. And Plaintiffs' analyst reports claimed surprise about the future forecast, not Meta's past results. SAC ¶¶ 134-39; *see* Exs. 29-34. That itself is no surprise, since Meta *met* its Q4 revenue guidance. *E.g.*, Ex. 30 at 1 ("Meta Platforms reported a generally in-line 4Q earnings report but provided 1Q guidance (surprisingly and) clearly below our/Street expectations.").

Striking out there, Plaintiffs have turned to other Q4 statements. They first note Wehner's remark that the iOS changes "really impacted our growth rates in Q3 and Q4." SAC ¶ 268. They then focus on Li's acknowledgement that Meta was "still" facing "significant" headwinds in Q4, arguing that this meant the headwinds "were 'still' continuing from at least Q3." *Id.* ¶ 269. But neither of those statements "reveal[ed] new information to the market." *In re BofI Holding, Inc.*

Sec. Litig., 977 F.3d 781, 794 (9th Cir. 2020). Given Meta's extensive Q2 and Q3 disclosures about the iOS changes, *supra* at 3-4, these remarks were mere "confirmatory information," not viable corrective disclosures. *Grigsby v. BofI Holding, Inc.*, 979 F.3d 1198, 1205 (9th Cir. 2020).

B. The Allegations About Reels Must Be Dismissed Again

Plaintiffs still fail to plead an actionable misstatement regarding Reels. Meta did "not have an obligation to offer an instantaneous update of every internal development" about the new product, especially given "the oft-tortuous path of product development." *Twitter*, 29 F.4th at 620.

1. The New Challenged Statements Were Not False Or Misleading

Plaintiffs now challenge statements that Sandberg and Wehner made about Reels on Meta's Q2 earnings calls. Both are inactionable as a matter of law. And neither was misleading in any event, particularly given Meta's repeated emphasis on its long-term Reels strategy.

Sandberg (Statement 6a). Plaintiffs first challenge Sandberg's Q2 remark noting that "we're seeing very strong growth in video monetization" on "Reels" and other products. SAC ¶ 229. But describing something as "strong" is textbook "puff[ery]." *Next Century Commc'ns Corp. v. Ellis*, 318 F.3d 1023, 1028 (11th Cir. 2003); *accord Okla. Firefighters Pension Fund & Ret. Sys. v K12 Inc.*, 66 F. Supp. 3d 711, 721-22 (E.D. Va. 2014). At any rate, Plaintiffs do not dispute that Meta was seeing promising monetization *growth* on Reels, just as Sandberg said.

Instead, Plaintiffs claim this statement was "a half-truth" because they claim that "Reels was negatively impacting [Meta's] financial results overall." SAC ¶ 200. That does not work. For starters, as this Court held last time, Plaintiffs have nothing to back up their "bald assertion" of a negative impact from Reels. FAC Order at 3. Their confidential witnesses say nothing about Reels. *See* SAC ¶¶ 101-12. And Reels did *not* involve a zero-sum tradeoff, as Meta has explained. *See* Dkt. 68 at 9. Rather than just cannibalize Meta's more fully monetized products, Reels also draws users' time and attention—and with it, ad dollars—away from competitors like TikTok. *Id.*

Even crediting Plaintiffs' conclusory allegation of a negative Q2 impact, nothing about Sandberg's statement "affirmatively create[d] an impression of a state of affairs that differs in a material way from the one that [allegedly] exist[ed]." *Brody*, 280 F.3d at 1006. She explicitly cautioned that Reels was "still monetizing at lower rates versus" older offerings. SAC ¶ 229. She

and others repeatedly explained that Meta was "follow[ing] the same pattern" as it had with prior product launches, Ex. 5 at 19—i.e., "build[] the consumer product first," and then slowly but surely embark on the "path to monetiz[ation]," Ex. 8 at 9. No reasonable investor could take her to be saying that Reels was already profitable just six weeks after ads launched on Instagram.

Wehner (Statement 6b). Plaintiffs also challenge Wehner's statements on Meta's Q2 follow-up earnings call stating that "Reels is going well" and that "we think this should be a good ad format." SAC ¶ 233. Both remarks are paradigmatic puffery. *See, e.g.*, *M & M Hart Living Tr. v. Glob. Eagle Ent., Inc.*, 2017 WL 5635424, at *8 (C.D. Cal. Aug. 20, 2017) ("going well" is "puffery"); *Anderson v. 1399557 Ontario Ltd.*, 2019 WL 5693749, at *8 (D. Minn. Nov. 4, 2019) ("good product" is too). The latter is an inactionable opinion (and forward-looking) to boot.

In any event, as with Sandberg's statement, Plaintiffs do not back up their assertion of a negative Q2 impact from Reels, and no reasonable investor would take Wehner to be asserting that Reels was *already* profitable. All he said was that the early stages of monetization were promising so far, and that he was optimistic about the future. That was not false or misleading. The "people in charge of an enterprise are not required to take a gloomy, fearful or defeatist view of the future." *Rombach v. Chang*, 355 F.3d 164, 174 (2d Cir. 2004). Nothing required otherwise of Wehner.

2. The Old Challenged Statement Was Not False Or Misleading Either

Plaintiffs' renewed challenge to Meta's Q2 and Q3 risk disclosures about product launches fail for the same reason as before. *See* SAC ¶¶ 237, 245 **(Statements 2a & 2b)**. These statements "only generally describe" the risks inherent in product launches across the board, without saying anything specific to the Reels introduction. *Kasilingam v. Stitch Fix, Inc.*, 2022 WL 10966359, at *2 (9th Cir. Oct. 19, 2022) (unpublished). And since they're "generic," this Court correctly concluded that they didn't "open[] the door" to a duty for Meta to disclose Reels' then-existing effect on Meta's bottom line. Hr'g Tr. 58:16-20. The Court should stand by that ruling.

Plaintiffs now say that "reasonable investors would have understood these" risk disclosures "to refer specifically to Reels" because "Reels was the only new product introduced during the Class Period." SAC ¶¶ 210-11. But even if that were true of Reels, it would not change the reality that Plaintiffs have only a "bald assertion" of a negative impact for Q2 and Q3. FAC Order at 3.

Nor would it mean that these risk disclosures somehow referred *only* to the here-and-now Reels launch. Meta's discussion of "material [risk] factors," 17 C.F.R. § 229.105, had to cover past, present, *and* future product launches.[5] That is why Meta's risk disclosures have had substantially the same language since 2013. *E.g.*, Ex. 2 at 17. And it is why they did not trigger a duty to provide "real-time" updates about Reels in particular. *Twitter*, 29 F.4th at 615.

C. The Allegations About Sandberg's Conduct Must Be Dismissed Again

Plaintiffs' Section 10(b) and Section 14(a) claims regarding Sandberg's conduct fare no better. They still have not alleged an actionable misstatement with particularity. *See Desaigoudar v. Meyercord*, 223 F.3d 1020, 1022 & n.5 (9th Cir. 2000). Nor have they shown "an essential link" between the proxies and any loss-causing corporate action, as Section 14(b) requires. *Id.* at 1024.

1. Plaintiffs Still Have Not Pled An Actionable Misstatement

Plaintiffs claim once again that two proxy statements disclosing Sandberg's compensation for 2018 through 2021 misled investors by not disclosing additional compensation she supposedly received through improper personal assistance. But they nowhere allege any change to Sandberg's reported compensation in the years since those proxies were issued on April 9, 2021 and April 8, 2022. And their own sources assert that, if any misfeasance occurred, Sandberg would simply "repay" Meta, Ex. 37 at 3—something Plaintiffs have conceded, Dkt. 65 at 24. For that reason alone, Plaintiffs have failed to plead that the compensation disclosures were false or misleading.

More fundamentally, as this Court held, "Meta ha[d] no 'duty to disclose uncharged, unadjudicated wrongdoing.'" FAC Order at 4 (quoting *Plumber & Steamfitters Loc. 773 Pension Fund v. Danske Bank A/S.*, 11 F.4th 90, 98 (2d Cir. 2021)). Plaintiffs now contend that their complaint alleges more than "merely that Meta was investigating Sandberg." SAC ¶ 168. That misses the point. The dispositive legal principle is that companies are not required to engage in "a rite of confession" by disclosing unproven allegations. *Plumber & Steamfitters*, 11 F.4th at 98. That is what Plaintiffs' articles consist of—unproven allegations based on anonymous sources whose credibility this Court correctly questioned. Hr'g Tr. 69:10-70:20. Meta had no duty to

[5] That the same risk disclosure in Meta's February 2, 2022 Form 10-K used Reels as an example just proves that it covered product launches generally—including, *but not limited to*, Reels.

disclose uncharged, unadjudicated allegations of wrongdoing.

In any event, Plaintiffs' allegations remain deeply flawed and hopelessly vague. The lion's share of the SAC's additions focus on "the 'Acknowledgements' section in both of [Sandberg's] books." SAC ¶ 153. But Option B was "published in April 2017," *id.*, and Lean In came out in 2013, Ex. 1 at 2. Any assistance "in writing and promoting" these books thus happened *before* 2018, the earliest compensation period covered by the proxies. SAC ¶ 156; *see* Ex. 9 at 45. These allegations are also worse than just irrelevant, however: They would turn simple human kindness into an actionable violation of the federal securities laws. In Option B, Sandberg thanked "friends and colleagues" for being "generous with their time" and showing "compassion," "candor," and "trust" throughout the writing process, after her first husband passed away. Ex. 3 at 3-4, 6. That expression of gratitude scarcely suggests that Meta employees were conscripted into helping out with a pet project on company time. It shows that coworkers with whom Sandberg was personally close supported her during the most difficult time of her life.

Plaintiffs' Kotick allegations are unchanged—and fail for the same reasons as before. Plaintiffs allege that "Sandberg worked with a team that included [Meta] employees [and] paid outside advisers" to "persuade" a media outlet "not to report on" a since-recanted accusation against Kotick "in 2016" and "in 2019." SAC ¶ 147. But Plaintiffs *still* do not address the fact that the team reportedly worked together only in 2016, Ex. 36 at 2-3, while their only 2019 allegation cites "emails" sent by Sandberg herself, not by Meta employees, SAC ¶ 150. Nor have Plaintiffs "grappled with" the reality that Sandberg's "reputation is concededly integral to the company's success," making coordination on PR matters entirely appropriate. FAC Order at 4.

As for Sandberg's wedding, Plaintiffs have added zero new supporting facts. Instead, they distort a statement from "her spokeswoman," which asserted that "Sheryl did not inappropriately use company resources in connection with the planning of her wedding." SAC ¶ 167 (emphasis omitted). Plaintiffs claim this comment "denied only that [Sandberg's] use of Company resources to plan her wedding was inappropriate, not that she had used Company resources for that purpose." *Id.* ¶ 277. That is like saying that someone who declares, "I did not spill coffee on the couch!" has confessed to spilling coffee somewhere else. Plaintiffs' transparent attempt to twist the flat denial

of an accusation into an admission of guilt ignores how people speak and should be rejected.

Finally, Plaintiffs allege in conclusory fashion that Sandberg improperly received "help with her foundation and family-member tasks." *Id.* ¶ 166. The core problem this Court found with these and the rest of the Sandberg allegations remains: "No details." Hr'g Tr. 71:21-24.

2. The Section 14(a) Claim Fails For Additional Reasons

Plaintiffs' failure to plead an actionable misstatement of Sandberg's compensation warrants dismissal of their Section 10(b) claim and Section 14(a) claim alike. But the latter additionally fails because Plaintiffs have not satisfied the essential-link requirement.[6]

Plaintiffs' Section 14(a) claim cannot survive unless their losses were the "result of the corporate action authorized by [the allegedly misleading] proxy statement." *Cowin v. Bresler*, 741 F.2d 410, 428 (D.C. Cir. 1984); *accord In re Paypal Holdings, Inc. S'holder Deri. Litig.*, 2018 WL 466527, at *4 (N.D. Cal. Jan. 18, 2018). Plaintiffs cannot meet that bar. To begin, as this Court held, "the non-binding 'say on pay' vote cannot form the basis of an 'essential link'" because it was not "*legally required to authorize*" Sandberg's compensation package. FAC Order at 5. Recognizing this, Plaintiffs now say that if Sandberg's supposedly "improper conduct" had been disclosed, she "would not have been re-elected" as a director. SAC ¶ 173. But even crediting that rank "speculat[ion]," FAC Order at 4 n.5, it does not matter—because Plaintiffs' losses were not meaningfully tied to her election as a director. Plaintiffs point to a stock drop after "Sandberg informed Meta of her decision to resign" as COO, SAC ¶ 179, but she was never elected as COO and *stayed on* as a director. FAC Order at 4. Any losses allegedly suffered after Sandberg received bad press, SAC ¶¶ 176-77, 181-83, were "only an incident to the election of directors" and "not actionable under Section 14(a)," either. *Cowin*, 741 F.2d at 428. There is no essential link.

D. There Is Still No Strong Inference Of Scienter

Plaintiffs' claims all fail for another independent reason: Their allegations do not give rise

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[6] Plaintiffs also have no cause of action under Section 14(a). Although *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964) implied one, that decision applied a long since "abandoned" approach to statutory interpretation and should be overruled. *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001). *Borak* controls for now, but this Court's "special responsibility" to narrowly construe judicially created causes of action still demands requiring "scienter" for Section 14(a) claims. *Adams v. Standard Knitting Mills, Inc.*, 623 F.2d 422, 428 (6th Cir. 1980); *see infra* at 25.

to a "strong inference" of scienter. 15 U.S.C. § 78u-4(b)(2)(A). Plaintiffs must do more than just "plausibly allege knowledge" of undisclosed facts; rather, they need particularized allegations showing that Defendants "intentionally misled investors, or acted with deliberate recklessness" towards a danger of doing so. *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1056-57 (9th Cir. 2014); *accord In re Rigel*, 697 F.3d at 883. And to survive dismissal, the "inference of scienter must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 314 (2007). Plaintiffs are still nowhere close to satisfying this stringent standard.

1. Plaintiffs' Scienter Theory Remains Fundamentally Flawed

Plaintiffs have made no new attempt to show that Defendants had a plausible motive to deceive investors. *See* SAC ¶¶ 280-84. They do not allege any stock sales by Sandberg or Li. They do not dispute that all of Zuckerberg and Wehner's sales were made pursuant to 10b5-1 trading plans or to satisfy tax obligations. *See, e.g.*, *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1067 n.11 (9th Cir. 2008). They do not "provide 'a meaningful trading history'" for anyone. *Zucco Partners, LLC v. Digimarc Corp.,* 552 F.3d 981, 1005 (9th Cir. 2009). And their allegation of a $75 billion share "repurchase[]" program, SAC ¶ 250, shows that Defendants had every reason *not* to inflate Meta's stock price, which would have required Meta to pay that inflated price when repurchasing stock.

That is damning. Difficult as it is in any securities case to plead scienter, "the lack of a plausible motive" allegation in particular "makes it much less likely that a plaintiff can show a strong inference of scienter." *Prodanova v. H.C. Wainwright & Co., LLC*, 993 F.3d 1097, 1108 (9th Cir. 2021). And here, the lack of any plausible motive not only fails to support Plaintiffs' position. It renders their scienter theory nonsensical, as explained below.

2. No Set Of Allegations Raises A Strong Inference Of Scienter

Once again, the "more plausible inference" for each set of allegations is that Defendants acted honestly, "not that [they] were intentionally or with deliberate recklessness seeking to mislead the market." *Nguyen v. Endologix, Inc.*, 962 F.3d 405, 419 (9th Cir. 2020).

iOS Allegations. Plaintiffs' scienter theory regarding the iOS changes still "does not make

a whole lot of sense." *Id.* at 415. They accuse Meta of pointlessly concealing negative effects of the iOS changes for a time, only to face "inevitable fallout" shortly thereafter. *Id.* This theory has no "legs" because, as just explained, Plaintiffs do not and cannot show that Defendants "sought to profit from this scheme in the interim, such as by selling off their stock" strategically. *Id.* Defendants also repeatedly warned about the iOS changes and *disclaimed* any suggestion that the impact was immaterial. *Supra* at 3-4. If Defendants "aimed to inflate [Meta's] share price," they "could have chosen far less ambiguous language than [they] did." *Boykin v. K12, Inc.*, 54 F.4th 175, 186 (4th Cir. 2022). Case-in-point: Meta's stock *dropped* after the challenged statements were made. SAC ¶¶ 263-66. And when Meta gave numerical guidance for Q4, Meta met that guidance. Ex. 24 at 1. All told, then, the far more compelling inference is that Defendants were "endeavoring in good faith to inform" investors, not deceive them.[7] *Yates v. Mun. Mortg. & Equity*, LLC, 744 F.3d 874, 888 (4th Cir. 2014).

Reels Allegations. Plaintiffs' scienter theory regarding Reels is similarly flawed. It would make no sense to conceal known negative effects from Reels, only to face (supposedly) "inevitable fallout" within months. *Nguyen*, 962 F.3d at 415. Wehner's and Li's explicitly cautious statements about Reels on earnings calls, like Meta's risk disclosure about product launches generally, would be an odd way "to inflate [Meta's] share price," *K12*, 54 F.4th at 186—especially given Meta's myriad other warnings tempering short-term expectations. And as with iOS, Meta's stock *dropped* in the wake of the challenged Reels statements. SAC ¶¶ 263-66. So here too the most compelling inference is innocent: Meta warned about "the oft-tortuous path of product development," *Twitter*, 29 F.4th at 620, while "investigat[ing]" Reels' trajectory as the product grew on Instagram and launched on Facebook, *In re NVIDIA*, 768 F.3d at 1056.[8]

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[7] The SAC's expanded reliance on confidential witnesses changes nothing. All four were low-level employees, a half-dozen rungs from having direct contact with any individual defendant. *See* SAC ¶¶ 104-09. They also offer only vague hearsay allegations that the iOS changes caused revenue drops of "approximately 4%" during Q2 and "greater than 5%" during Q3. *Id.* ¶ 107. Even if credited, those figures scarcely show sufficiently "devastating" impacts to support a core operations theory. *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 987 (9th Cir. 2008).

[8] It does not matter that, with an additional quarter's worth of data, Meta later found that Reels (among other factors) "adversely affected advertising revenue in the second half of 2021." SAC ¶ 270. This Q4 disclosure does not show that Meta reached that conclusion *after Q3* but

Sandberg Allegations. Plaintiffs' scienter theory regarding Sandberg's alleged conduct makes even less sense. Defendants could not have deliberately or recklessly misled investors about Sandberg's 2018-2021 compensation by failing to disclose personal assistance allegedly received in 2017 or even earlier. Yet recycled press articles about pre-2018 events make up most of Plaintiffs' allegations. Regardless, it is far more plausible that colleagues close to Sandberg volunteered their personal time to help with an emotionally fraught writing process, not that they were forced to do so while on the job. It is likewise far more plausible that Meta PR personnel appropriately coordinated with Sandberg's personal advisers regarding the Kotick matter given its obvious implications for her concededly crucial reputation, as opposed to providing services to Sandberg in her personal capacity that were unrelated to their day-to-day duties. And it is far more plausible that an executive earning millions of dollars paid for her own wedding, rather than misappropriating company resources. On top of all that, Plaintiffs' prior concession that the value of any assistance deemed improper in hindsight would simply be repaid—rather than added to Sandberg's compensation totals—buries a dagger in the notion that Defendants fraudulently tried to mislead the market about her compensation. *See* Dkt. 65 at 24.

E. Dismissal Should Be With Prejudice

This case should be dismissed with prejudice. Plaintiffs "cannot cure the deficiencies of [their] claims through further amendment," so "granting further leave to amend would be futile." *Greenberg v. Cooper Companies, Inc.*, 2013 WL 2403648, at *15 (N.D. Cal. May 31, 2013) (Gonzalez Rogers, J.). Plaintiffs have had two "prior opportunit[ies] to amend." *In re Dynavax Sec. Litig.*, 2018 WL 2554472, at *9 (N.D. Cal. Jun. 4, 2018) (Gonzalez Rogers, J.). Yet the SAC "failed to remedy the deficiencies" with their existing allegations and instead dredged up new, equally meritless claims. *Curry v. Yelp Inc.*, 875 F.3d 1219, 1228 (9th Cir. 2017). There is "no need to prolong the litigation" any further. *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009).

VI. CONCLUSION

For all these reasons, this action should be dismissed with prejudice.

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deliberately or recklessly failed to disclose it—especially given the lack of *any* factual allegations, from confidential witnesses or otherwise, supporting contemporaneous knowledge.

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